

**Ad Hoc Expert Meeting on Consumer Protection:  
The interface between competition and consumer policies ("Ad Hoc Expert Meeting")  
Palais de Nations, Geneva, 12<sup>th</sup> - 13<sup>th</sup> July, 2012**

*CUTS participated in the UNCTAD Ad Hoc Expert Meeting on Consumer Protection held on the above dates at the Palais de Nations, Geneva and prepared daily dispatches that were circulated extensively among government officials, practitioners, civil society, development partners, etc. Among other issues UNCTAD to take up the mantle to push for reforms in the Guidelines, as consumer protection was already joined up with the branch dealing with competition law issues. Many competition agencies also handle part of the consumer protection agenda, such as misleading advertising and deceptive claims.*

### ***CUTS Dispatch: Day I***

The purpose of this Ad Hoc Meet (global seminar) was to share knowledge on best practices among competition and consumer protection authorities in developed and developing countries and highlight interesting developments on competition and consumer protection matters in the wider competition and consumer protection community. While many developing countries have been adopting national competition laws and establishing national competition authorities over the last 30 years, significant challenges remain ahead in terms of ensuring the maximum benefits for these countries from competition policy and consumer protection as tools for their development.

The meeting began with introductory comments from the UNCTAD secretariat, followed by expert presentations. The session concluded with country statements. Further, the meeting was designed to provide an overview on the potential changes that could be made to the UN Guidelines on Consumer Protection.

**Consumer Protection and Competition Law share the same goal, which is to protect the consumer (two sides of the same coin)**

- The proposition that competition policy and law promotes competitive markets rather than the interests of individual competitors makes them, in a general sense, favourable from the consumer perspective. Most competition laws shun market power and anti-competitive practices. This results in positive outcomes for consumers. But it would be wrong to treat competition policy and law as a panacea that will automatically serve the "overall consumer interest". Competition creates conditions where consumers have choice and consumer protection law protects that choice from being undermined, among other things such as redressal of complaints.
- Consumer protection is a very important area; however, in many countries consumer protection laws are non-existent or woefully outdated, given the technological advancements. In light of this, there is a need to revisit the UN Guidelines on Consumer Protection by taking into account new features of contemporary economic activity.
- There is another interesting parallel between competition law and consumer protection law. In competition law, there is the traditional distinction between "per se" cases and

"rule of reason" cases. Consumer protection law has a similar structure. A practice is deemed "deceptive" if it misleads reasonable consumers and is likely to affect their purchase decisions. In this respect, deception offenses are treated like per se offenses. On the other hand, a practice can be prohibited as "unfair" only if the resulting consumer injury is "substantial," the injury is not reasonably avoidable, and it is not offset by countervailing benefits. This looks like a rule of reason inquiry.

- It was suggested, that the following areas would need to be considered while revisiting the Guidelines i.e. **safety, education, effective enforcement, capacity building, enhancing knowledge to both consumers and suppliers, consideration of current technologies, etc.**
- Much discussion focused on the **importance of product safety**. All presenters and delegates highlighted the necessity of consumer safety. Consumers should not have to worry about being poisoned from food or injured from goods & services that they purchase. Any national or international consumer protection regime needs to include product safety standards and also adhere to those standards.
- Access to reliable information was an additional point of agreement. **Consumers with poor or misleading information do not and cannot make effective choices.** This problem was highlighted in the financial sector. The recent financial crisis could be attributed to consumers having poor and misleading information regarding the terms of financial instruments that they were purchasing. Effective consumer protection laws should prohibit false or misleading information, but also require that consumers be informed of its origin, safety concerns and other pertinent information relevant for specific products to make an informed decision.
- There was a widespread agreement regarding the **close relation of consumer protection and competition law**, because they share the same goal i.e. consumer welfare. The primary distinction is that the consumer protection targets individuals and is generally reactive, whereas competition law is proactive and ensures that the overall market conditions remain fair and competitive. However, because of common goals, efficiency and effectiveness gains can be expected from close collaboration of the authorities mandated to implement the Laws.
- **An important area of concern was information privacy.** Many firms gather personal information about consumers without their knowledge and/or consent. Consumer protection laws need to ensure consumer's Right to Privacy is respected and maintained. For example, in the US, Google Inc. agreed to settle with the Federal Trade Commission charges that it used deceptive tactics and violated its own privacy promises to consumers when it launched its social network, Google Buzz, in 2010. The agency had alleged that the practices violated the FTC Act.

### **‘Competition Law is not a panacea for all problems’**

- In managing an economy, **competition law is not enough.** Adequate institutional framework, human resources, transparency and fairness in the enforcement process are needed to ensure that competition law and policy are implemented well for markets to function properly, particularly for the poor.
- Specific measures of consumer protection include ensuring advertising is sincere, products have proper labelling, contract rules are fair and straightforward and there are reasonable

rules to cover the violation of contracts. Furthermore, price information needs to be clear. There are too many examples where actual prices of goods & services are not clearly evident.

- An interesting suggestion raised by a delegate from UK proposed the inclusion of **behavioral economic theory** in formation of consumer protection laws. This theory recognizes that consumers do not always make rational decisions, as they are often biased, have imperfect information and will often make complex decisions using “rule of thumb.” Thus, by analysing the way consumers make their decisions, consumer protection authorities may become aware of practices utilized by select businesses in exploiting consumers into paying too much for their products or not making a good decision, etc. One example was Drip Pricing. In this situation a price is displayed, however, in the process of purchasing additional fees and charges get added, resulting in increase in the final price.

## ***CUTS Dispatch: Day II***

The Final day of the Ad Hoc Meeting was mainly devoted to the agenda on expansion of the UN Guidelines on Consumer Protection with the participation of several practitioners and civil society representatives, including Consumers International, the global organisation of consumer bodies from governments and civil society.

It is often argued that in many markets, competition supports consumer interests, provided that general contract law, etc are in place and enforced. Competitive sellers try to attract consumers, and informed, educated consumers are able to understand the offers and make sensible choices. But where consumers do not have reasonable access to the right information, then suppliers can behave strategically to increase their profits at the expense of consumers. Consumers are being presented with new products and new marketing strategies, and are increasingly engaging in cross-border commerce in consumer products.

Given this, it was suggested that consideration be given to revising the United Nations Guidelines for Consumer Protection, in the light of these and other developments.

### **"Inclusion in formal financial services varies greatly across development levels and economies"**

- Consumer information and education and developing self-governing [i.e. active, assertive and capable consumer] are important but financial education is hard to teach and in terms of the new financial instruments it is even harder. Therefore, consumer organisations/representatives have to actively engage in determining and monitoring the new financial architecture in terms of all systemic risks.
- Inclusion in formal financial services varies greatly across development levels and economies. To gain more access to formal accounts we would need to do the following:
  - remove physical, bureaucratic, and financial barriers
  - need for financial education and awareness as because financial instruments are quite complex and not easy to understand.

- It was recommended to revise the section on financial services to address systemic risks, financial inclusion and fair deals for consumers
- The UN Guidelines for Consumer Protection serve as a valuable tool in setting an agenda for governments to address consumer issues. However, another thing that stands out in the guidelines is the absence of any explicit reference to funding for the work that needs to be carried out. Thus, it was suggested that the governments should be pressed in the Guidelines to develop a standard on the funding of consumer advocacy.

### **CUTS Views:**

- Government should take measures to regulate monopoly services and create an environment conducive of development, tariff determination, investment, performance standard in case of public utility services for protection of consumer interest, market development etc.
- urgent need of a strong consumer protection mechanism, setting clear rules for financial institutions regarding their dealings with retail customers and to ensure that consumers receive information to allow them to take informed decisions, are not subject to unfair or misleading practices and have access to redressal mechanisms to resolve disputes.
- consumers should be more involved in deciding the financial architecture and monitoring the institutions that are established as part of the architecture.
- We need a global institution as financial services are global in nature and thus, there is a need to bring financial services under the WTO.
- Governments should enact fairer laws and practices, holding industry players to account for their treatment of consumers and make the knowledge available, accessible and affordable to all.

Further, key recommendations as emerged from the discussion regarding financial services and consumer protection:

- information on financial services be reliable, timely, accurate or contract can be terminated; contract charges and practices;
- need to put in place national financial consumer protection bodies with consumer protection as an explicit objective;
- consumer participation in regulatory processes and role in public hearing should be part of the UN guidelines;
- guidelines need to also refer to redress and dispute resolution systems;
- in the recent years competition in financial services sector has been reduced, there is a need for independent competition inquiries;
- also need for measures to promote stability and safety for consumer deposits and investments

Regarding consumer behaviour, humans behave rationally when information is transparent; when information is opaque people violate rational behaviour. UN guidelines do lay emphasis about unrestricted information flows and transparency. In terms of financial services, such as pensions, mortgages, investment trust, credit card, and current account what consumers need,

making a wrong choice is costly. Thus, practical steps need to be taken to protect the consumers in making a wise decision:

- consumers should be allowed to revisit their decisions; minimize consumer costs; consumers have sunk costs; complexity should be minimized by regulation.
- how the information is presented is important and financial services is an area where clarity is needed; need to better understand how firms take decisions because what we know of consumers is only half the story.
- During floor deliberations: Turkey expressed concerns regarding product complexity and emphasised on the need to simply the products for the benefit of consumers; Russia emphasized bottom up initiatives; Nigeria emphasized that consumers need to be educated; consumer agencies and sector regulators cooperation is needed, etc.

**The following issues are some of the salient points of the Draft agreed conclusions as adopted by the Ad Hoc Expert Meeting on Consumer Protection:**

- Recognised that consumer protection policy complements competition policy and law in addressing national and global challenges and the two policies are mutually reinforcing. That they also share the common goal of promoting and protecting consumer welfare;
- Recognised that new facts and conceptual framework requires a re-valuation of policy interventions in the area of consumer protection;
- Underlined the importance of consumer empowerment;
- Recognised that need for advocacy and for education of consumers on their responsibilities and duties;
- Decided that the UN guidelines for consumer protection need to be reviewed, in order to assess how relevant the guidelines are in today's market place and whether they have achieved the outcomes that their drafters intended;
- Further recommended that UNCTAD should in light of the experience with the Ad hoc expert meeting, undertake to collaborate on the content of potential revisions, as appropriate in particular with International Consumer Protection and Enforcement Network (ICPEN), Consumers International and the relevant OECD bodies and in consultation with other consumer bodies.

**CUTS support the engagement of UNCTAD with CI and other consumer bodies to undertake potential revisions in the Guidelines.** CI is the world federation of consumer groups that is working together with its members and serves as the only independent and authoritative global voice for consumers. **It is accredited to ECOSOC of the UN as the only international organisation representing the consumer cause.**

CUTS proposal to observe the World Competition Day on 5th December continued to receive support from competition agencies and consumer groups, but it was not formally accepted as an agreed recommendation of the IGE. However, agencies and consumer groups assured CUTS that they will plan to organise the next World Competition Day later this year with the theme on "Bad impacts of cartels on the poor". CUTS will produce and distribute a kit for the same later in the year.